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## **South Dakota Real Estate Commission Approves Condominium Agreements, Application Form**

Binding agreements between condominium developers and potential condo buyers prior to completion of the units will now be allowed under a decision made by the South Dakota Real Estate Commission at its recent meeting on March 14 and 15.

Previously, condominium projects had to be substantially completed before purchase agreements could be entered into with buyers. Currently some lending institutions require condominium developers to show proof that a certain number of units are under contract before loan approval is given. Dee Jones Noordermeer, Executive Director of the Real Estate Commission, says the decision not only brings that requirement into compliance for developers but also gives them a tool to market the project. By allowing binding agreements between the developer and buyer prior to breaking ground, buyers will be able to customize their individual units. The change brings South Dakota more in line with practices allowed in other states which regulate condominium projects.

During its meeting, the commission also approved a new condominium project application form. The revised application was developed by the commission's Specialized Real Estate Advisory Group which is comprised of commission staff, legal counsel, and commission-selected brokers who specialize in real estate development and commercial brokerage. The new registration form can be found on the South Dakota Real Estate Commission website at [www.state.sd.us/sdrec](http://www.state.sd.us/sdrec).

Serving on the advisory group were Jones Noordermeer, commission auditor/investigator Michelle Metzinger, legal counsel Jim Robbenolt, attorney John Archer, Commissioners Charlie Larkin and Paula Lewis, and brokers Gene Addink, Doug Brockhouse, Jim Dunham, Craig Lloyd, Dan McFarland, and Sandra Runde.

For more information on the registration form or the condominium agreements, contact Dee Jones Noordermeer, Executive Director, South Dakota Real Estate Commission, at 605-773-3600.



## A Letter From the Chairman

April is Fair Housing Month, so I thought I would just share some information with you. In the Winter 2007 Fair Housing News newsletter produced by HUD, they report that in FY 2006 HUD and state and local government agencies received over 10,000 housing discrimination complaints. A summary press release is on page 4 of this newsletter. This amount was the highest number received in a single fiscal year. Normally, the complaints average around 8,000 annually. That is quite a statistic. The article continues on to state that the increase could be due to increased public education on their rights and how to file a complaint.

Unfortunately the article does not state how many of the complaints were not investigated or the number that were investigated and the complaint dismissed. It is all too easy to have something that is said or an action misconstrued as a discriminatory act. I would just remind everyone to continue to conduct business as you are by treating all of your clients with respect and dignity. If anyone is interested in reading the newsletter it can be found by going to [www.hud.gov](http://www.hud.gov).

In other news, I am happy to announce that I have been re-appointed to the Real Estate Commission by Governor Rounds to a 3 year term. I have learned much over the past four years and cannot believe that I have been on the Commission for that long already. As I have mentioned in past articles, in order to better serve you better, I personally need input from you on how you feel I am doing as a Commissioner, how the whole Commission is operating, and any concerns or issues that you feel need to be researched by us. For anyone who would like to contact me directly, please feel free to contact me via e-mail at [brian.jackson@greatwesternbank.com](mailto:brian.jackson@greatwesternbank.com) or 605-336-5661.

Lastly, just to let you all know that we have not forgotten, we are still collecting data on the new testing format

that was implemented last October. Feedback has gotten more positive as the instructors have modified their classes to help the students understand the testing process. We will continue to report back to you as the information comes in. I hope all is going well for everyone.

Sincerely,  
Brian Jackson



## From the Directors Desk

The calendar says it is spring and the Commission's Spring Caravan is

underway, but apparently Mother Nature wants to hold onto winter a little longer. Hopefully, warmer weather is on its way so that our Caravan speaker, Carmel Streater, will have good traveling across our beautiful state. Be sure to attend this timely seminar presented by one of the nation's leading real estate educators.

As you see from the press release on page one of this newsletter, the Specialized Real Estate Advisory Group has made major progress regarding condominium filings. With Commission approval, developers are now able to pre-sell units and those with smaller projects (4 units or less) will have fewer filing requirements than the larger projects. Another accomplishment of the advisory group's hard work is a revised condominium application form that is much more user friendly. This form also received the Commission's approval at its March meeting and can be found on the Commission's website at [www.state.sd.us/sdrec](http://www.state.sd.us/sdrec).

Words of advice to responsible brokers — be sure to have a written policy in place regarding the procedures to follow when an associate moves to another brokerage. By doing so, the transition will go more smoothly and the clients will be better served.

It's never too early to begin working on your continuing education

requirements. Those of you renewing this year might want to go to the "Licensees Only" section of the Commission's website to check your continuing education to verify that your course sponsors reported your attendance. If you've taken a course in another state, be sure to report that by filing an "Out of State Credit Application" with the Commission. There is no fee for this and by filing it as soon as you complete an out of state course, you will be expediting your renewal.

My personal congratulations and gratitude is extended to Chairman Brian Jackson for accepting his reappointment by Governor Rounds. Brian has diligently served on the Commission as a public member since April 2003. Please read his bio printed in this issue to get better acquainted.

Think Spring!

*DjN*

## Jackson Re-Appointed to Commission

Governor Mike Rounds recently re-appointed Brian Jackson to the South Dakota Real Estate Commission. Brian is currently serving as the Commission Chairperson.

Brian is a life long South Dakota resident and is a graduate of T.F. Riggs High School in Pierre and Augustana College in Sioux Falls, with a bachelors of arts degree in Business Administration.

Brian began his banking career in Pierre in 1997 and relocated to Sioux Falls in the fall of 2003. Currently, Brian is a Mortgage/Personal Banking Officer for Great Western Bank at their 57<sup>th</sup> and Louise Ave location.

In addition to his banking career, Brian is also a commissioner on the Petroleum Release Compensation Fund and is looking forward to volunteering in the Sioux Falls area. In the past, much of Brian's time was spent hunting and fishing, however, he is now fortunate to spend time with his wife Molly, and his two boys, ages 6 and 7 mo.



## In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensee who recently passed away:

John Abbott, Sioux Falls

## Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter, excluding cases currently on appeal. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

### **Tyler Fritz, Sturgis, Broker**

Summary Suspension of License, Findings of Fact, Conclusions of Law, and Order. Revocation of license, \$2500 monetary penalty and costs of \$777.15. Violation of ARSD 20:69:15:02, 20:69:15:08.01, SDCL 36-21A-71(1), and SDCL 36-21A-119. Mr. Fritz actively participated in real estate transactions despite his license being placed on inactive status for failure to submit proof of errors and omissions insurance coverage as required. The Commission learned that Mr. Fritz was also in violation of SDCL 25-7A-56 for being in arrears on court ordered child support, which would also prevent issuance of an active license.

**The Rental Connection; Jeffrey W. Iverson, Sioux Falls, Property Manager; Scott R. Lloyd, Sioux Falls, Property Manager; Scott A. Henderson, Sioux Falls, Residential Rental Agent**

Findings of Fact, Conclusions of Law, and Order. Monetary penalty of \$500 and costs of \$857.98. Violation of ARSD 20:69:15:02 and SDCL 36-21A-119. Defendants actions constitute unprofessional conduct. Defendants failed to timely renew their errors and omissions insurance coverage. Defendants failed to immediately surrender their licenses and their identification cards as required by ARSD 20:69:15:08.01. Due to Defendants' actions in failing to renew

errors and omissions insurance in a timely fashion, Commission placed Defendants on inactive status. Defendants continued to conduct activities for which licenses were required during the time their licenses were inactive, including advertising their services on the Internet. Defendants further engaged in unprofessional conduct as they failed to renew and file errors and omissions coverage in a timely fashion on numerous occasions in the past.

### **Steven Folk, Sioux Falls, Broker**

Findings of Fact, Conclusions of Law, and Order. Monetary penalty of \$500 and costs of \$2747.93. Violation of SDCL 36-21A-71(30) and SDCL 36-21A-132. Mr. Folk's actions constitute unprofessional conduct in two ways. Mr. Folk failed to protect and promote the interest of the client whom the licensee had undertaken to represent to the best of the licensee's ability. Mr. Folk should have disclosed to the Complainant that open houses may not be the best way to sell the property, and suggested other ways to sell the property, which may have included representation by other real estate professionals other than himself and his firm. Mr. Folk should not have taken a listing agreement that listed the price at a level that was too high. Mr. Folk's actions violated the duties and obligations he owed to the seller to exercise reasonable skill and care for the client and to promote the interest of the client with the utmost good faith, loyalty and fidelity.

### **Faith Goodine, Sturgis, Broker Associate**

Findings of Fact, Conclusions of Law, and Order. Suspension of License for six months, with six months suspension stayed on the condition that Ms. Goodine complete 6 hours of continuing education in agency and 6 hours of continuing education in license law within 1 year and pay costs of \$1714.71. Violation of SDCL 36-21A-71(3), (31), (32); SDCL 36-21A-72 and SDCL 36-21A-147. Ms. Goodine's actions constitute unprofessional conduct in several ways. Ms. Goodine made many substantial and willful misrepresentations to the Complainant regarding her ownership position and the price the owner would accept. Ms. Goodine misrepresented the true position of the seller and failed to deal fairly with all of the parties to the transaction by failing to disclose her ownership position. Goodine's

actions constituted incompetence and Ms. Goodine failed to disclose that she was an owner of the property being sold. Her actions in corresponding by e-mail and telephone with the Complainant constituted substantive contacts with the Complainant and required her to disclose her agency and brokerage relationships and a written copy of the disclosure on Commission-prescribed forms.

### **Darrell Leamy, Sioux Falls, Broker**

Findings of Fact, Conclusions of Law, and Order. Revocation of license, monetary penalty of \$2500 and costs of \$1823.95. Violation of SDCL 36-21A-71(3), (15), (31), (32). Mr. Leamy's actions constitute unprofessional conduct in several ways. Mr. Leamy made many substantial and willful misrepresentations to the Complainant regarding a franchise fee and converted a check to his own use. He further made substantial and willful misrepresentations with reference to the transaction which was injurious to the parties. Mr. Leamy's conduct constitutes dishonesty and fraudulent conduct, including the forgery of a check. Mr. Leamy failed to deal fairly with all of the parties to the transaction by forging a check and converting the check to his own use. His actions constitute bad faith, incompetency and fraudulent dealings in the forgery and conversion of a referral check.

## Offering Your Opinion on Areas Outside Your Expertise Can Be Risky

*By Maggie Knauss*

Has a client ever asked you whether stakes in the ground represent the boundaries of a property or whether a crack in a basement wall appears to be serious? Have you ever been asked whether a damaged area of a wall appears to be termite or mold damage? Offering your opinion when asked questions like these may increase your risk. When your client is concerned about an issue that is outside the area of your expertise, you should recommend that your client retain a professional. While you may think the stakes in the ground (or even a fence)

represent the boundaries of a property, you could be wrong and voicing your opinion could be costly.

We frequently see claims against real estate licensees where the licensee offered an opinion on an area outside his or her expertise and the licensee's opinion was later found to be incorrect. Offering your opinion outside the area of your expertise can be risky. It is always best to let a professional address areas of concern regarding the condition or boundaries of a property.

If you are repeating information provided to you by another source, you should always reveal your source. For example, if the property owner tells you that the boundary lines run with the fence, you should state, "The owner of the property tells me that the boundary lines run with the fence. However, I would recommend that you obtain a survey to determine the boundary lines if the location of the boundaries is important to you." This response discloses the source of your information, rather than providing your own opinion regarding the location of the boundaries. It also protects you from future problems with the boundary lines if you have recommended a survey. If repairs to the property are required for the closing, be careful not to tell the buyers that the repairs have been satisfactorily completed. It is better to have the seller, home inspector or contractor making the repairs provide a written report of the completed repairs. This clarifies that the information does not come from you and helps you avoid liability in the event that the repairs are not satisfactory.

It is also important not to make recommendations regarding the quality of a home inspector, surveyor, or other contractor. When your client asks for a recommendation of a competent home inspector or other professional, it is better to provide a list of several professionals without making any recommendation. Providing a list will prevent the client from later claiming that you misrepresented the qualifications or quality of a contractor retained by the client. Since home inspectors are required to be licensed in South Dakota, you should only list licensed home inspectors.

You should also remember that you may not recommend the services of another individual, organization or business entity in which you have an interest or from whom

you may receive a referral fee without timely disclosing this information to the party receiving the referral or recommendation.

You can be helpful to your client without increasing your liability. Try to be aware of potential problems and avoid inadvertently causing yourself to be involved in a lawsuit by simply "trying to help" your client.

*Ms. Knauss is an adjuster and the Claims Supervisor for Rice Insurance Services Company, LLC*

## Kansas Alters Reciprocity

The Kansas Real Estate Commission has cancelled reciprocity agreements with other real estate licensing jurisdictions effective March 8, 2007. Applicants licensed in other states must now pass the state portion of the Kansas licensing examination. In order to sit for the state portion of the test, out-of-state candidates will need to produce a Commission-provided Waiver, a pocket card showing current licensure in another state, or a certificate of license history or printout of the license history from the web site of another state. Upon successful completion of the exam, Kansas Commission staff will review submitted applications for compliance with other licensing requirements, including licensing records from the applicant's state of residence. A bill is currently before the Kansas legislature that may further amend and clarify the license law. More details about Kansas licensing requirements are available at [www.kansas.gov/krec](http://www.kansas.gov/krec).

## Continuing Education Corner

*By Karen Callahan, Education Director*

April is Fair Housing Month and the Spring Caravan is a great opportunity to get the education in the latest fair housing issues. Here are a few reasons to consider why it's a good idea to attend the Caravan:

### Top 10 reasons to attend the Spring Caravan

10. Learn the latest issues in Fair Housing.

9. Avoid the last-minute scramble to complete continuing education hours.

8. Avoid the last-minute scramble to complete continuing education hours. Yes, really!

7. Catch up with all of your colleagues you haven't seen in a while (during the scheduled breaks, of course)

6. Attend a course presented by the current President of the Real Estate Educators Association

5. Find out what a DREI is.

4. Guess whether the meeting room air temperature will feel like the Sahara or the North Pole.

3. Those great cookies served at the morning break!

2. Quality, convenient, economical education!

1. Aren't all of the other reasons enough?

There is still time to attend a Spring Caravan session! On-site registration is available each day, starting at 8:15 a.m. The course runs from 9 a.m. to 4 p.m.

### Dates/Locations are as follows:

**April 17 & 18, Sioux Falls Ramkota**

**April 19, Watertown Ramkota**

**April 20, Aberdeen Ramkota**

**April 23, Rapid City Ramkota**

**April 24, Spearfish Holiday Inn**

**April 25, Pierre Ramkota**

For more information and resources on fair housing, visit the HUD website at [www.hud.gov](http://www.hud.gov)

## Housing Discrimination Complaints at an All-Time High

*Press Release from HUD - Over 10,000 complaints filed last year; most alleged race or disability.*

Government agencies received 10,328 housing discrimination complaints, the highest number ever filed in a single year, according to an annual fair housing report released by the U.S. Dept. of Housing and Urban Development. HUD's Fiscal Year 2006 report, which details HUD's enforcement efforts during the year, also found that race and disability top the list of reasons why individuals filed complaints.

For the second year in a row, race and disability were virtually tied as the most common bases of housing discrimination

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reported to HUD and state and local government agencies funded through its Fair Housing Assistance Program (FHAP). Of the more than 10,000 complaints filed, 40 percent alleged racial discrimination while nearly the same percentage alleged discrimination against persons with disabilities. Complainants, according to the report, most often alleged discrimination in the terms and conditions of the sale or rental of housing, or refusal to rent.

The report was released as a part of National Fair Housing Month, which occurs every April to mark the signing of the Fair Housing Act. This year's theme, for the 39<sup>th</sup> anniversary of the law, informs housing providers and the public that "Fair Housing: It's No an Option...It's the Law".

To view a copy of the Annual Fair Housing Report visit [www.hud.gov/offices/fheo/fy2006rpt.pdf](http://www.hud.gov/offices/fheo/fy2006rpt.pdf)

## New Licensees

### Auctioneer

Caspers, Nicholas L – Hecla  
Mentele, Denny – Howard

### Broker

Bolton, Ronald J – Sioux City, IA  
Bullinger, Michael J – Fargo, ND  
Houge, Michael K – Burnsville, MN  
Huber, Vera L – Newcastle, WY  
Kapusta, Thomas J – Sioux Falls  
Lovrien, Brett A – Sioux Falls  
Simmons, Thomas E – Rapid City  
Sturm, Keith – Plymouth, MN  
Todd, David J – Bozeman, MT

### Broker Associates:

Bornitz, Connie J – Sioux Falls  
Bowar, Michael P – Parkston  
Brinkman, Virginia – Volin  
Boreker, Rochelle D – Rapid City  
Burchatz, Jennifer L – Watertown  
Buxton, Brett A – Sioux Falls  
Carlyle, Justin – Rapid City  
Christenson, David R – Britton  
DenHartog, Tim – Canton  
Domek, Thomas – Custer  
Dreyer, Edward A – Rapid City  
Edinger, Jacqueline A – Mitchell  
Fischer, Stephanie P – Lesterville  
Flemmer, Teri L – New Underwood  
Foland, Adam P – Madison  
Gilbert, Denver – Worden, MT  
Girard, Mike S – Wakonda  
Goetzinger, Andrew L – Sioux Falls

Grimsrud, Marilyn J – Rapid City  
Helma, Sam L – Sioux Falls  
Heyd, Alecia B – Tea  
Hubbel, Lora L – Sioux Falls  
Hughes, Jeb T – Sundance, WY  
Jamison, Elizabeth – Sioux Falls  
Johnson, Holly – Hartford  
Kasten, Julie D – Clear Lake  
Kelly, Ryan L – Rapid City  
Kirchoff, Christine L – Black Hawk  
Lundie, Bruce H – Rapid City  
Maguire, Renee L – Watertown  
Malone IV, Edward, J – Rapid City  
Mattecheck, Mark L – Sioux Falls  
Mayes, Raymond E – Rapid City  
McDowall, Jason – El Segundo, CA  
McKay, Charles B – Hill City  
McKnight, Alica A – Rapid City  
Poppens, Gary D – Sioux Falls  
Robinson, Christle – Lead  
Salonen, April M – Brandon  
Schmidt, Laura J – Sioux Falls  
Stephens, Daniel W – Rapid City  
Stone, Matthew D – Yankton  
Svartoi, Philip O – Freeman  
Teunissen, Gerald – Sioux Falls  
Vander Linden, Christopher – Webster  
Weber, Scott R – Rapid City

### Home Inspectors

Howe, Steven D – Vermillion  
Martin, Michael L – Chancellor  
Niederworder Jr., Leslie R – Hot Springs  
Trowbridge, Luke S – Vermillion  
Wiedmeier, Dennis R – Redfield

### Property Manager

Andersen, Lee D – Sioux Falls  
Howe, Steven D – Vermillion  
Schopen, Patricia A – Nemo

### Residential Rental Agent

Collins, Stacy A – Brookings  
Fossen, Sylvia "Sue" I – Hot Springs  
Jones, Jessica A – Sioux Falls  
Lawver, Lita – Deadwood  
Schulte, Lori L – Clear Lake  
Sehr, Tabitha – Valley Springs  
Smith, Michelle K – Sioux Falls

### Salesperson

Grant, Terri R – Lawton, IA  
Greef, Kelly B – Hamilton, MT  
Meier, Benjamin L – Elkhorn, NE  
Savage, Morian D – Sloan, IA  
Steinmetz, Lyle J – Carson, ND  
Trucano, James E – Sioux City, IA  
Woods, Jason D – Sioux City, IA  
Yeh, Kuen C – Sioux City, IA

Zetzman, Theodore J – Omaha, NE  
Zoucha, Tom A – Elkhorn, NE

## SDREC Joins National Auctioneer Organization

The SD Real Estate Commission voted to become a member of the National Auctioneer Licensing Law Officials Association (NALLOA) at its March, 2007 meeting in Pierre.

NALLOA has been in existence for over 20 years and serves as a forum for member states and individuals to communicate and promote the common good in regulating the auction profession. Currently, there are 22 state regulatory agencies and 135 associate members that belong to the Association.

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Editor: Karen Callahan

### THE COMMISSION AND STAFF

Brian Jackson, Chairperson .... Sioux Falls  
Eileen Fischer, Vice-Chair ..... Pierre  
Dennis Eismach, Member ..... Pierre  
Paula Lewis, Member ..... Rapid City  
Charlie Larkin, Member ..... Watertown  
Dee Jones Noordermeer,

Executive Director ..... Pierre  
Karen Callahan, Education Dir ..... Pierre  
Norma Schilling, Licensing ..... Pierre  
Michelle Metzinger, Auditor ..... Pierre  
Angela Madsen, Auditor ..... Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.



# APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608.



**Sherry Bren,  
Program  
Administrator  
(605)  
773-4608  
445 E. Capitol  
Pierre, SD 57501**

## Appraiser Certification Program Mission – Purpose – Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

## Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with

Title XI. The Council meets quarterly in public forum. See the Website for meeting information. [www.state.sd.us/appraisers](http://www.state.sd.us/appraisers)

## Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail – [Sherry.Bren@state.sd.us](mailto:Sherry.Bren@state.sd.us). Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

The following disciplinary action has been taken by the Appraiser Certification Program:

**Department Complaint Case # 07-241, Robert E. Penfield, Bowman, ND.** The Department of Revenue and Regulation issued a Final Order denying Robert E. Penfield's State-Certified General Appraiser Certification Renewal Application for violation of SDCL 36-21B, ARSD 20:14:11:02, and ARSD 20:14:11:03(2), (4), (10), and (14).

## Review of Cases – 1/1/2007 - 4/5/2007

For the period Jan. 1 - Apr. 5, 2007 the Department has received 8 upgrade applications, 1 new application claiming experience and initiated 5 complaint investigations.

Upgrades – 3 pending, 1 agreed disposition and 4 issued

New Application Claiming Experience – 1 pending

Complaints – 2 pending, 1 disciplinary action and 2 dismissed with no action

## New Licensees – February/March 2007

Steven A. Hall, State-Certified General – Missoula, MT

Tina M. Hepner, State-Registered – Beresford, SD

Kiley D. Krantz, State-Registered – Mitchell, SD

Brad A. Weiman, State-Certified General – Denver, CO

John A. Kilpatrick, State-Certified General – Seattle, WA

Edward E. Lumpee, State-Certified General – Pueblo West, CO

Janis L. Culverhouse, State-Registered – Caputa, SD

Norman L. Edwards, State-Certified General – Phoenix, AZ

## Most Common USPAP Violations Series: Does The Presentation of Your Credentials Violate USPAP?

*[Article written by Craig Steinley,  
Consultant for the Dept. of Revenue and  
Regulation at the request of the Dept.]*

Title XI of FIRREA was enacted by Congress in 1989 for the purpose of protecting Federal financial and public policy interests in real estate related transactions. To that end, Title XI refers to the certification and licensing of individuals by states and uses the terms State certified and State licensed appraisers.

Most states quickly implemented Title XI directed programs to regulate appraisers. In fact, a small number chose to enact the requirements of Title XI in an expanded

format that also includes the regulation of the entry level practitioner or 'trainee' in the field of appraisal. In the case of South Dakota, the state-registered real estate appraiser classification was created by law and administrative rule to allow initial oversight and guidance of the typically inexperienced candidate desiring to become a state-licensed or state-certified real estate appraiser.

In fairness, it must be noted that the state-registered real estate appraiser in SD does hold a certificate or license by virtue of the administrative rule regarding appraisers that defines a "Certificate" as:

*The certificate or license issued to a successful applicant for state-registered real estate appraiser, state-licensed real estate appraiser, state-certified residential real estate appraiser, or state-certified general real estate appraiser, as applicable.*

**[ARSD 20:14:01:01(7)]**

In this sense, then, the state-registered real estate appraiser has a "certificate or license" and is also given a unique identifying number by the Department of Revenue and Regulation.

The potential for a misleading presentation of the state-registered real estate appraiser's credentials occurs in the many preprinted appraisal forms, including the URAR or Fannie Mae 1004 form, that typically have blanks for the appraiser's **State Certification #** or **State License #**. With the explosion of proprietary forms from various professional organizations and appraisal software vendors, there are literally dozens of form reports now available for use by a state-registered real estate appraiser, each providing a blank for their **State Certification #** or **State License #**. However, Title XI made it very clear that the terms *licensed* or *certified* in this context were understood to mean those appraisers eligible to perform appraisals in federally related transactions. Since the state-registered real estate appraiser is not eligible for these transactions, they should not use these blanks for their credentials.

The Dept. of Revenue and Regulation has provided notification to all state-registered real estate appraisers that it is misleading, and therefore a **major** USPAP violation, to insert their certificate number on the **State Certification #** or **State License #** blanks of a preprinted form report. The same is true in the presentation of the appraiser's credentials in a narrative report. Instead, some form reports have been modified to

include an "**Other (describe)**" line, which the state-registered real estate appraiser is encouraged to utilize. Note that no matter whether a form or narrative report, it is **always necessary for the registered appraiser to explain** the limitations of their certificate in the report. This is particularly true as most states that have an initial training certificate use a term other than state-registered real estate appraiser. This unfamiliarity demands that the state-registered real estate appraiser make full disclosure to be sure that their client knows exactly the type of license/certificate they hold and the limited scope of practice allowed.

For more information on the Dept.'s requirements of a state-registered real estate appraiser, see its website at <http://www.state.sd.us/drr2/reg/appraisers/appraiser.html>. Key revisions and a complete set of the Administrative Rules regarding appraisers are available on the Appraiser Certification Program Website: [www.state.sd.us/appraisers](http://www.state.sd.us/appraisers).

## 2007 Renewal

The 2007 renewal applications will be mailed the first week in July. In order to renew your certificate for state-certified general, state-certified residential, state-licensed and state-registered appraiser you must submit the completed application, applicable renewal fees and verification of 28 hours of approved continuing education which includes the 7-hour National USPAP update course by August 17, 2007. (The 15-hour national USPAP Course may not be submitted in lieu of the 7-hour National USPAP update course.)

## USPAP Q & A

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Sales or Financing Concessions

Question: The real estate market I appraise in has slowed down over the last 12 to 18 months, and it is now extremely common to see seller concessions as part of a purchase transaction. What are the USPAP requirements regarding proper treatment of sales/financing concessions?

Response: Sales or financing concessions may have an effect on the price paid for a property. As such, it is important

for the appraiser to recognize this and analyze their impact.

Sales or financing concessions should be considered in light of the type and definition of value used in an assignment. If the value opinion to be developed in a real property appraisal assignment is market value, then Standards Rule 1-2© requires the appraiser to ascertain whether the value is to be the most probably price:

- (i) in terms of cash; or
- (ii) in terms of financial arrangements equivalent to cash; or
- (iii) in other precisely defined terms; and

(iv) **if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;** (Bold added for emphasis)

It should be noted that some client groups, such as Fannie Mae, specify how sales or financing concessions are to be addressed in assignments that are subject to their guidelines. Appraisers performing assignments of this type should become familiar with all applicable guidelines in order to satisfy the requirements of the COMPETENCY RULE.

### Obligation to Analyze Prior Listings of Subject Property

Question: I know that Standards Rule 1-5(a) requires an appraiser to analyze all current listings of the subject property. Does it also require analysis of *prior* listings of the subject property?

Response: No. Similar to sales history requirements for comparable sales, this Standards Rule does not require an appraiser to analyze a prior listing history for the subject property. However, in the development of an appraisal, an appraiser is required under Standards Rule 1-1(b), to *not commit a substantial error of omission or commission that significantly affects an appraisal. If information about a prior listing is known by the appraiser, and that information is relevant to the appraisal problem, it must be considered.*

An analysis of the subject's prior listing history may be required by applicable supplemental standards in some assignments.

### Obligation to Analyze Withdrawn or Expired Listings

Question: I was asked to appraise a single-family residence for refinancing. I am aware that the property had been previously listed but did not sell. During my data investigation and analysis, I noted that the owner's "estimate of value" was \$375,000. When I looked up the listing history, I found it had been withdrawn from the market at the asking price of \$325,000. What are my obligations under USPAP regarding a withdrawn or expired listing of the subject property?

Response: Standards Rule 1-5(a) states: *When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:*

*(a) analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal.*

Therefore, there is not a specific requirement in Standards Rule 1-5(a) to consider and analyze a withdrawn or expired listing of the subject property, prior to the date of the appraisal.

However, any prior listing of the subject property (as of the effective date of the

appraisal) might be significant in that it indicates the property's availability in the market and the market reaction to that availability. Likewise, agreements of sale and options are generally significant to the appraisal problem in that they involve a "meeting of the minds," relating to the property's value, of the potential buyer and seller.

In the development of an appraisal, an appraiser is required under Standards Rule 1-1(b), to *not commit a substantial error of omission or commission that significantly affects an appraisal. If information about a withdrawn or expired listing is known by the appraiser and that information is relevant to the appraisal problem, it must be considered.*

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#### Record Keeping Requirement for Oral Reports and Testimony

Question: Does the expectation to have a transcript or a summary apply only in assignments when an appraiser provides an oral report?

#### Is a Transcript Required for Oral Report and Testimony?

Question: Is a transcript of an oral report or testimony required for the workfile

when an appraiser testifies about an appraisal assignment?

#### Is a Transcript Required if a Written Appraisal Report was Prepared?

Question: Does the expectation to have a transcript or summary of testimony apply if the appraiser has a written appraisal report and testifies only to the information contained in that report?

#### Is a Separate Certification Required if a Written Appraisal Report was Prepared?

Question: If an appraiser prepares a written appraisal report, is the workfile required to contain separate signed certification for any testimony the appraiser provided in support of that report?

#### Is a Transcript of the Entire Proceeding Required?

Question: Must the workfile contain a transcript or summary of an appraiser's testimony for the entire proceeding, or only for that portion that contains the appraiser's testimony?

Response: The answers to the above USPAP Q&A can be found at: [www.appraisalfoundation.org](http://www.appraisalfoundation.org)